IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 8TH DECEMBER 2006 / 17TH AGRAHAYANA 1928

WP(C).No. 32047 of 2006(M)

PETITIONER:

K.K.SASIDHARAN, S/O. KONNAPPAN,
KOLAYAPADATH HOUSE, KOTTUVALLY,
KAITHARAM, N. PARUR.

BY ADV. SRI.M.V.BOSE
ADV. VINOD MADHAVAN
ADV.NISHA BOSE

RESPONDENTS:

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1. THE DISTRICT COLLECTOR,
ERNAKULAM.

2. BABU, S/O. KONNAPPAN,
EDAYATTUPARAMBIL, KOTTUVALLY,
KAITHARAM, N. PARUR.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO. 32047 OF 2006

DATED THIS THE 8th DAY OF DECEMBER, 2006

JUDGMENT

This petition is filed under Article 227 of Constitution of India challenging Ext.P2 order passed by the executing Court whereunder delivery of the property was ordered. The case of petitioner was that he is entitled to kudikidappu right in view of the judgment in second appeal and therefore the order is to be quashed.

2. Learned Counsel appearing for petitioner was heard.

3. Asserting the right claimed herein, petitioner admittedly filed a suit and sought for an order of temporary injunction. It was not granted. Petitioner filed an appeal. That was also dismissed. That order was challenged before this Court. This Court also did not interfere with that order and made clear that ultimately if petitioner succeeds in the suit, he can seek redelivery of the property. In the back ground of the factual matrix and the circumstances of the case, I do not find any infirmity in Ext.P2 order passed by the learned Munsiff warranting interference.

4. Learned Counsel appearing for petitioner submitted that in respect of two cents, the executing Court had passed Ext.P9 order

exempting delivery of that property and therefore the remaining two cents also may be exempted. Ext.P9 order only shows that the decree holder reported before the executing Court that he does not want to get the delivery of the two cents involved in E.A.994/06 at present. It is not an order on merits. In such circumstances, petitioner is not entitled to contend that the other two cents also should be exempted because of that order. In view of the submission of decree holder, the two cents covered by E.A.994/06 will not be delivered in E.P.801/04.

Writ petition is dismissed.

M.SASIDHARAN NAMBIAR,JUDGE

Acw